

Planning & Zoning Commission
Mid-Month Meeting Minutes of July 23, 2009
1st Floor North Conference Room - City Hall

Present: Chairman Steven Sizemore, Presiding; Cindy Weeks, Vice-Chair; Thomas Byers (arrived in meeting at 4:10 p.m.) Nathaniel Cannady; and Darryl Hart

Absent: Jerome Jones and Mark Sexton

Regular Meeting - 4:00 p.m.

Chairman Sizemore called the meeting to order at 4:00 p.m. and informed the audience of the public hearing process.

Administrative

- ? Ms. Weeks moved to approve the minutes of the June 18, 2009, mid-month meeting. This motion was seconded by Mr. Hart and carried unanimously by a 4-0 vote.
- ? Several members of the Commission have expressed concern on the way the stormwater ordinance may be headed and Chairman Sizemore wanted City staff to know about those concerns ahead of time. Therefore, there will be a staff update and Commission comments on August 5, 2009, regarding the ordinance amending Chapter 7 of the Code of Ordinances of the City of Asheville regarding changes to the stormwater ordinance.
- ? Chairman Sizemore noted that his term, along with the term of Mr. Byers will expire on August 14, 2009, but noted that both will continue to serve until their successors have been appointed.

Agenda Items

- (1) **Request to rezone property located at 14 Mount Clare Avenue. The applicant is requesting the rezoning of a small strip of land from RS-8 Residential Single-Family High Density District to NCD Neighborhood Corridor District. The property owner is Marketplace Development LLC and the contact is Dean Pistor. The properties are identified as PINs 9649.23-8632 and a portion of 8647.**

Urban Planner Blake Esselstyn oriented the Commission members to the site and said that this is the consideration of rezoning properties located at 14 Mount Clare Avenue from RS-8 Residential Single-Family High Density District to NCD Neighborhood Corridor District.

The applicant is requesting the rezoning of a narrow portion of a parcel from RS-8 to Neighborhood Corridor District (NCD). This rezoning petition is prompted by several actions, but the most recent driver of the request is the subdivision and recombination of two properties both owned by the applicant, resulting in a shifted property line. The relocation of the property line means that the zoning district is no longer aligned with the property boundary. A rezoning of this sliver (roughly 500 square feet in area) would eliminate a situation where the parcel is split-zoned.

The strip proposed to be rezoned includes a sizeable retaining wall and a significant grade change between the residential property to its north and the parking lot to its south. The proposed rezoning would also more accurately reflect the division between the two different land uses, as that division has evolved since the line was originally drawn.

The owner purchased the properties in 1999, and the commercial (south) portion was rezoned from Community Business II to NCD in 2003. The owner alleges that in 2005 retaining walls to the north and east of the parking lot were failing and in urgent need of repair.

Modifications were made in an expeditious fashion with the claim that any delay of the stabilization of the slopes could have resulted in major damage. These swift changes were pursued without going through the standard permitting process. Subsequent to the completion of the changes, the applicant had discussions with staff about obtaining such permits, but the process was never completed.

The applicant is now seeking a new occupant for the corner building, and wishes to have all the permits in order, as well as to be able to provide enough parking to meet the minimum requirements for a variety of uses. (To provide one example, a 3,650 square foot building used as an office would require a minimum of 10 spaces, but if used for a health and fitness facility, it would require 18. Taking full advantage of the flat space available for parking would require that parking be located in the area currently zoned RS-8.)

This rezoning is one of a series of steps the applicant is undertaking in an effort to bring the property fully into compliance. In addition to the redrawing of the property line mentioned above (already approved and recorded), the applicant has obtained approval for a flexible development standard for the side setback and area of the residential lot to the north. The applicant has requested alternative compliance for the landscape buffering required between the commercial zoning and residential zoning, which was considered and approved by the Tree Commission on July 20. Finally, the improvements will be subject to a Level I staff review.

The RS-8 district was created to establish a high density per acre for single-family dwellings where public infrastructure is sufficient to support such development and to stabilize and protect the district's residential character in areas of existing high density single-family development while promoting a suitable environment for single-family living. The Neighborhood Corridor District was established to foster medium density, mixed-use development that is economically viable, pedestrian oriented and contributing to the place making character of the built environment.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- ? Would help the property owner achieve compliance.
- ? Would remove presence of split zoning.

Con:

- ? Permission should have been sought at the time of original modifications.

Though the original property modifications prompting this rezoning were completed without proper permits, staff feels that the proposed changes are similar to what would have been required had the project been fully reviewed at the outset. Additionally, the area proposed to be rezoned is small enough in size that effects on the adjacent residential zoning district will be minimal, and the rezoning would result in a net benefit for the area.

Chairman Sizemore opened the public hearing at 4:10 p.m. and when no one spoke, he closed it at 4:10 p.m.

Based on the above findings and the analysis provided in the report, Mr. Cannady moved to recommend approval of the rezoning of properties located at 14 Mount Clare Avenue from RS-8 Residential Single-Family High Density District to NCD Neighborhood Corridor District. This motion was seconded by Ms. Weeks and carried unanimously by a 4-0 vote.

At 4:10 p.m., Mr. Byers entered the meeting.

(2) Ordinance amending Chapter 7 of the Code of Ordinances of the City of Asheville regarding Level III Review for Pack Square Park Projects in the Central Business District.

Urban Planner Jessica Bernstein said that this is the consideration of an ordinance amending Chapter 7 of the Code of Ordinances regarding Level III review for Pack Square Park projects in the Central Business District. This amendment will ensure compatible development and public input for those proposals adjacent to Pack Square Park.

During the March 10, 2009, City Council hearing, Council considered a request to grant a construction easement to allow for the development of a road along the edge of Pack Square Park that would accommodate a specific development proposal. Several members of Council expressed a concern that additional consideration should be required for projects adjacent to this highly visible civic area where adjacent development has a greater potential to negatively impact the user experience and community image. At the conclusion of the discussion, Council directed staff to propose a change to the Unified Development Ordinance (UDO) that would require Council review and opportunity for public consideration of all projects adjacent to Pack Square Park.

Currently, projects adjacent to Pack Square Park require review by Council only if they are larger than 100,000 square feet (either new construction or for additions/expansions) or include over 50 residential units. All other reviews seek to ensure compliance with the minimum technical standards only or, in some cases, offer design recommendations that may be accommodated by the developer on a voluntary basis.

There are potentially several methods to ensure a more comprehensive review with public input; however, in an effort to ensure simplicity, easy administration, and to avoid unintended consequences, one option presents itself as a clear choice and is detailed below. Staff has also offered an alternative for consideration and will be prepared to discuss other options should the Commission desire more information. Both alternatives proposed would exempt renovations that do not propose changes to the exterior of the structure.

Proposal 1: Require Level 3 review for all projects within 100 linear feet of the Pack Square Renaissance Area boundaries, if the new project is one or more of the following project types:

- ? New construction
- ? Additions or expansions to existing structures when the expansion is over 1000 square feet
- ? Renovations that expand outdoor gathering areas (including rooftop areas) or parking areas

While the Downtown Master Plan does propose various design requirements and a number of restrictions guiding project activity adjacent to the Park, it is difficult to determine how effectively development surrounding the park will be regulated until the UDO changes necessary to implement the plan are adopted. Until this is accomplished, the potential for incompatible development around the park remains a possibility. The proposal above secures the greatest level of security until other controls are put in place.

Alternative Proposal: Require Level 3 review for all projects within 100 linear feet of the Pack Square Renaissance Area boundaries, if the new project is one or more of the following project types:

- ? New construction over 20,000 square feet or more than two stories
- ? Additions or expansions to existing structures when the expansion is over 5,000 square feet
- ? Additions or expansions that increase the height of an existing structure by more than five feet

- ? Renovations that expand outdoor gathering areas (including rooftop areas) or parking areas by more than 1000 square feet

This second option seeks to eliminate smaller scale projects from undergoing a Level 3 review process since such small projects are not anticipated to create an undue impact on the Pack Square Park, regardless of form.

Pros:

- ? Assures City Council review of projects in direct proximity to an extremely sensitive public space.
- ? Assures the opportunity for public review and comment of projects with the greatest potential for impact on the Park.
- ? Exempts renovations to existing buildings where no expansions or changes to the exterior are proposed.
- ? Provides an option (alternative) to allow small scale projects to avoid the Level 3 process.
- ? Can easily be revised (redone) when more specific UDO changes are recommended as part of the implementation of the Downtown Master Plan.

Cons:

- ? Somewhat contradicts the stated intention in the Downtown Master Plan to eliminate the need for this additional level of review with the adoption of restrictions on height, massing, shadow, etc. that will prescribe appropriate parkside development.
- ± May discourage smaller scale redevelopment around the Park.
- ± May only be used temporarily.

The Downtown Commission reviewed this proposal at their meeting on July 10, 2009. The Commissioners expressed concern over several aspects of the ordinance change, primarily regarding discord with the Downtown Master Plan recommendations to eliminate Conditional Use Permits and minimize City Council's review of smaller-scale projects. They were not opposed to the idea of placing greater scrutiny on projects surrounding the park, but did not feel that a Level 3 review was an appropriate method for gaining public input and additional oversight. Commissioners were also concerned about making changes to the review processes while significant ordinance revisions in accordance with the Master Plan recommendations are currently underway. They recommended unanimously (10-0) that the idea of interim control makes sense but they do not support this specific proposal and feel that a better strategy is to pursue the Downtown Master Plan recommendations for UDO changes as a highest priority. Some support was also expressed for the concept of considering this change as a temporary UDO change, with a clear intention for removing this level of scrutiny in conjunction with the adoption of the UDO changes to implement the Downtown Master Plan recommendations.

Staff recommends that the Commission support the proposal described above but seeks input on changes that would improve or clarify the stated intention of the Council. She noted that this amendment will be taken to the Pack Square Conservancy for their input in August because they are an interested party.

Ms. Bernstein responded to Ms. Weeks when she asked if the project had to be entirely in the 100 linear feet from the park or just touch it.

In response to Mr. Cannady, Ms. Bernstein said that currently any development in that area over 1000 sq. ft. or 50 residential units would be a Level 3 review. Smaller projects would have Downtown Commission review and some have Pack Square Conservancy review, but wouldn't necessarily go to City Council, unless they were a larger size.

Mr. Hart believed there should be more scrutiny in this area and could support this change as a temporary change, with the intent of removing this level of scrutiny when the UDO changes are made to implement the Downtown Master Plan.

Upon inquiry of Ms. Weeks, Ms. Bernstein said that this amendment would not apply to Mr. Coleman's project. However, if Mr. Coleman was not able to meet the conditions of his Level 2 approval and he re-submitted his project, this amendment would apply.

When Mr. Cannady asked if Mr. Coleman had any comments on this proposed ordinance, Ms. Bernstein said that she did send him a copy of the amendment but she has not heard from him.

In response to Chairman Sizemore, Ms. Bernstein pointed out some possible changes between this amendment and the Downtown Master Plan recommendations, noting that it's hard to know the outcome of the recommendations until after all the public comment and after the different public hearings. She felt the biggest difference is that the Downtown Master Plan suggests eliminating the conditional use permit.

Chairman Sizemore felt the type of protection for the Park is consistent between this proposed ordinance and the Downtown Master Plan.

Upon inquiry of Chairman Sizemore, Planning & Development Director Judy Daniel said that while staff may bring segments of the Downtown Master Plan UDO changes to the Planning & Zoning Commission separately asking for recommendations, staff foresees Council adopting them all at the same time and within those amendments would be language eliminating this temporary amendment.

Ms. Bernstein responded to Ms. Weeks when she asked what was the actual proposal in the Downtown Master Plan that would be limiting development in this area.

Chairman Sizemore opened the public hearing at 4:30 p.m.

Mr. Steve Rasmussen said that people clearly care about our town square. He supported this amendment, especially since there may be other projects in this area brought forward between now and the adoption of the Downtown Master Plan. He hoped as the Master Plan gets incorporated into the UDO that emphasis remains on public input.

Mr. Cass Kunst, lessor of a spot at the corner of College and Spruce Streets, asked for information on becoming involved with the Pack Square Conservancy. Ms. Daniel said that she would be happy to meet with Mr. Kunst and provide that information to him.

Ms. Margaret Koutris, property owner at the corner of College and Spruce Streets, expressed concern on how this amendment would apply to her property in the future if perhaps condominiums were built there. Ms. Daniel said that she would be happy to meet with Ms. Koutris to go over the details of how changes on her property could be affected by the Downtown Master Plan.

Chairman Sizemore closed the public hearing at 4:36 p.m.

Ms. Weeks explained why she felt the Commission is being asked to consider stricter requirements than the Downtown Master Plan recommendations. She felt that once the Park is complete there might be people who want to develop around the Park that would be in keeping with the Downtown Master Plan and this might vastly scale the project down, especially within the 100 linear feet.

Mr. Byers could support a little bit more protection in this interim period before the UDO changes are adopted from the Downtown Master Plan recommendations.

Mr. Cannady was not in favor of adding more conditions to discourage development. He wasn't opposed to protecting downtown but would feel more comfortable if the Downtown Commission was supportive of this amendment.

Mr. Byers also had a huge regard for the wisdom of the members of the Downtown Commission and them not supporting this amendment caught his attention. However, they unanimously support interim control, but they are not supportive of a way to achieve that interim control.

Chairman Sizemore said that even though Proposal 1 is more restrictive than the Downtown Master Plan he was more comfortable in putting in a greater level of restriction on a temporary basis until we adopt the provisions of the Downtown Master Plan, simply to make sure that we do not have a bad circumstance come and take away from this beautiful and expensive project on our front steps of the City. He agreed that adding another level of review is not only more costly, but it can be prohibitive. But, he didn't think it was a prohibition against the development that would be proposed. It would only add another level of review until we can get into the Downtown Master Plan. He supported Proposal 1 on a temporary basis until the Master Plan recommendations are approved.

There was a brief discussion, initiated by Mr. Cannady, about postponing this action until staff works with the Downtown Commission to see if there is an amendment they could support.

Based on the above findings and the analysis provided in the report, Chairman Sizemore moved (1) to recommend approval of Proposal 1 on a temporary basis until the UDO changes for the Downtown Master Plan are approved, and, if that has not occurred within a six month period that this amendment be brought back to the Planning & Zoning Commission for further consideration of renewal or other action. This motion was seconded by Mr. Byers and carried unanimously by a 3-2 vote, with Mr. Cannady and Ms. Weeks voting "no".

(3) Ordinance amending Chapter 7 of the Code of Ordinances of the City of Asheville regarding establishing separation requirements for family care homes.

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of an ordinance for the refinement of the City's existing standards for Family Care Homes, along with the consideration of a new requirement that would require a minimum distance between Family Care Homes and between Group Homes and Family Care Homes.

Information from the Staff Report: "In the early 1980's, the North Carolina lawmakers adopted statutes that required local zoning ordinances to treat "family care homes" the same as single-family residences. As a result of this law, family care homes cannot be prohibited in a district that allows a single-family residence and, unlike group homes, they cannot be subject to any special review requirements, such as special or conditional use requirements. Despite these protections, state lawmakers did provide the opportunity for local ordinances to include a half-mile (2,640 feet) separation requirement between family care homes to prevent a single street or neighborhood from supporting a disproportionate number of such homes.

"The definition of family care home for zoning purposes may vary from that used for state social service licensing purposes. To qualify for this zoning protection, the facility must be designed to provide room, board, and care for six or fewer handicapped persons in a family environment. Handicapped persons include those with physical, emotional, or mental disabilities, but not those who have been deemed dangerous to themselves or to others. This definition also includes any physical or mental impairment that limits a major life function, including disease and substance abuse. In 1988 the federal Fair Housing Act was amended to prohibit local

governments from discriminating against handicapped persons and local governments must make reasonable accommodation for housing for the handicapped; it is generally believed that the separation requirement still allows for reasonable accommodation.

"Despite this option being available to North Carolina municipalities, Asheville has not utilized this law to require a separation between family care homes. Perhaps as a result of this flexibility, lower income, working class neighborhoods are now reporting the effects of an increasingly strong trend where a single provider purchases or leases multiple homes in proximity to each other. While the true effects of the trend may be argued between providers and neighbors, the practice of placing a disproportionate number of such homes in one area changes the overall composition of the neighborhood (reducing diversity) and increases the turnover of residents. It is believed that this is exactly what the separation requirement adopted by North Carolina lawmakers was intended to prevent. As a result of this trend, the consideration of adding a separation requirement may be warranted and is clearly, statutorily allowed.

"While the statutes allow for a separation of up to one-half mile (2,620 feet) the City has had success with a 600 foot separation requirement for group homes to effectively prevent an overabundance of such homes in a given area and staff feels that consideration of a lesser standard may be sufficient to address the growing concern.

"This action complies with the City Council Strategic Operating Plan in that it provides for the long-term stability and sustainability of a neighborhood by maintaining a controlled amount of housing for a select population while preserving housing opportunities for working families.

"Identifying either a need for an increase in the supply or, the need for controlling the proliferation of family care homes in residential neighborhoods, is not specifically identified in other adopted plans.

Pros:

- ? Helps stabilize neighborhoods that are typically more vulnerable – may help control resident turnover.
- ? Maintains housing stock for working families.
- ? Provides more flexibility and options than what can be exercised under state statute.

Con:

- ? Reduces the flexibility and opportunity for establishing new housing for a protected class of citizens.

"City staff recommends that the Planning & Zoning Commission adopt the ordinance for establishing a separation requirement between family care homes (and group homes)."

Ms. Tuch said that while this amendment is simple in its form it required a fair amount of research which was not the easiest mass of information to wade through. Particularly challenging was understanding the relationship, or more often, the lack of relationship between the State's social services system and State statutes and our local ordinances. Contributing to this confusion is the Federal laws that address discriminatory practices against special populations. She then attempted to summarize what we have come to understand.

- ? The Federal Fair Housing Act defines "disability" as any physical or mental impairment that substantially limits one or more major life activities. This ends up including a host of impairments including those recovering from substance abuse.
- ? The NC State statutes also defines "person with disabilities" as someone who suffers from a temporary physical, emotional, or mental disability including but not limited to This definition does not specifically identify persons recovering from substance abuse as does the Federal definition; however, it does not exclude it either.

- ? The State and the City of Asheville include definitions of family care homes defined as a home with support and supervisory personnel that provides room and board, personal care and habilitation services in a family environment for not more than six resident persons with disabilities.
- ? The Federal Fair Housing Act and our State Statutes establishes that family care homes are considered a residential use and that they shall be a permissible use in all residential districts of all political subdivisions and that it is illegal to discriminate against them or prohibit them in residential districts. This includes homes designed to support those individuals who are in recovery programs, provided they meet all the other requirements.
- ? Now, what the State Statute does allow is for local ordinances to include a separation between Family Care Homes. Asheville has not previously taken advantage of this option; however, we are beginning to experience some community issues in association with the clustering of these homes that we feel it is worth considering.
- ? The state statute allows up to a ½ mile separation (which is 2,640 feet) which we felt was quite large and would likely render a number of the existing homes as being non-conforming. As an alternative, we are proposing a 600 foot separation which is what is currently required between group homes. It seemed to serve us well for group homes so we thought it appropriate for family care homes as well where the intensity of activity is usually not as large. As a point of reference, in an average urban neighborhood, 600 feet is about 10-12 lots away from the subject property.

She concluded by saying that staff has carefully examined this proposal and does recommend the addition of the separation requirement along with the other adjustments to the existing standards. She respectfully requested the Commission's support as well.

In response to Mr. Cannady, Ms. Tuch explained the difference between a group home and a family care home.

Upon inquiry of Mr. Cannady, Ms. Tuch explained why family care homes and group homes are not all registered. What was explained to her is that if the home doesn't deliver a service, e.g., professional counseling, or administering a specific kind of treatment, they are not required a license. However, if they are serving children and/or delivering a service they are required to get a license.

In response to Ms. Week, Ms. Tuch said that staff has been discussing this for a long time and now there is a matter in one particular neighborhood where there is a provider who is leasing up homes all around what has been a long standing home, which staff believes was established legally. The other homes being leased up have not received any permits and because of the clustering effect of these homes and the large number of individuals in that immediate area, the neighborhood was concerned about who belongs and doesn't belong in the neighborhood.

At 5:11 p.m., Chairman Sizemore opened the public hearing.

Mr. James Judd noted there are basically three different statutes associated with this amendment. He strongly advised the City to not expand the definition of family care homes beyond what the State recognizes. The State created and defined family care homes; therefore the State's Department of Social Services should regulate them. The City should simply require documentation from the State prior to accepting a family care home. By expanding the definition of a family care home the City is not only making things unclear and unnecessarily complex but is also opening the door to potential fraud /confusion unless the City cares to expend the resources to regulate family care homes not recognized by the State. Determination of whether a residence

is a family care home is certainly not the strength of the City and should be handled by the State. Unfortunately for the Courtland Avenue family care home, the City accepted the owner's affidavit that they were a family care home and to his knowledge never asked the State Department of Social Services for their review. In the State's eyes the Courtland Avenue family care home is essentially a boarding house without any of the City's required boarding house rules. If the City feels strongly that 12 step program homes should be allowed in every residential district then he suggested staff create a new Use Subject to Special Requirements and don't call it a family care home. He also questioned parking in a setback. He fully supported the separation requirements.

At 5:26 p.m., Chairman Sizemore closed the public hearing.

In response to Chairman Sizemore, City Attorney Oast said that the proposed ordinance is consistent with the requirements of State law and the policy behind the Federal law.

In response to Chairman Sizemore, City Attorney Oast explained that the City is required not to discriminate in our zoning ordinances against persons with disabilities.

Chairman Sizemore stated the proposed ordinance is about adding a separation requirement and staff took the opportunity to refine the definition of family care homes.

Mr. Byers noted that N.C. Gen. Stat. sec. 168-21 defines a family care home as a "home with support and supervisory personnel that provides ... personal care and habilitation services" He felt that was more than just a boarding house. Ms. Tuch explained the challenge with the 12 step homes that are specifically exempted from licensing requirements.

Upon inquiry of Ms. Weeks, City Attorney Oast said that he has come across an ordinance from Raleigh that combines all of these types of group homes (family care homes, group homes, 12-step homes) into one kind of use. That may be something to be explored at some point. Ms. Weeks wondered if homes that are licensed could be one group addressed the same way.

In response to Ms. Weeks, Ms. Tuch explained how Planning staff will manage the mapping. She said we will document the homes that are licensed that we know about first. Then to add any new homes as they come in and map them, in order to maintain the separation requirements. There is likely a list maintained by the licensing agency, but this would only apply to those facilities that are licensed. She believed there is another list maintained by the local management entity but her understanding is that it only tracks those facilities that receive public funds. Buncombe County assigns land use codes and we could do a query to determine how many of these codes are recorded. It may be possible to create a report to identify certain uses but it would only track those that received a permit and it would not record all the other unpermitted homes out there. The attempt is to keep everyone informed and keep track and make sure these standards are being followed.

Ms. Weeks could not support the amendment. She felt that for many of these people this is the only place they can live and in order to support the amendment she would want to see where the group homes are located now. If we start drawing circles in the City, we start to eliminate whole sections of the City from having these types of homes in them. She felt the whole point for these kinds of homes is to main-stream people in our community, not to draw attention to them. There are many of these homes in neighborhoods that do not cause problems and many don't even know it is a group home. She disagreed with the statement in the staff report that read "... lower income, working class neighborhoods are now reporting the effects ... and that the composition of the neighborhood would ... reduce diversity." She felt that statement could be used to keep people out of neighborhoods for many reasons.

Ms. Tuch responded to the statement in the staff report. She said that she will work in improving the wording in that, but that was intended to point out that when you get a cluster of the

minority population (those being in recovery - not referring to any other kind of population), that that effect creates a concentration of a minority population, which reduces diversity in the community. She made a point of clarification that the two neighborhoods that staff has been dealing with this the most are not predominately African American neighborhoods.

Based on the above findings and the analysis provided in the report, Mr. Byers moved to recommend approval of amending Chapter 7 regarding establishing separation requirements for family care homes. This motion was seconded by Mr. Hart and carried unanimously by a 4-1 vote, with Ms. Weeks voting "no".

Other Business

Chairman Sizemore announced the next meeting of the Planning & Zoning Commission will be on August 5, 2009, at 5:00 p.m. in the First Floor Conference Room in the City Hall Building.

After consulting with City staff, Chairman Sizemore announced there would be no August 20, 2009, mid-month meeting.

Adjournment

At 5:53 p.m. Chairman Sizemore adjourned the meeting.

